INDEX

CITATIONS

677939—46——1

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 261

OTTO A. CASE, AS COMMISSIONER OF PUBLIC LANDS OF THE STATE OF WASHINGTON, PETITIONER

v.

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE PRICE ADMINISTRATOR

OPINIONS BELOW

The District Court did not render a formal opinion, but orally stated the reasons for its judgment in open court on August 4, 1944. The reporter's transcript of the oral opinion appears at R. 56–64. The opinion of the Circuit Court of Appeals (R. 71–77) is reported at 149 F. (2d) 777.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Ninth Circuit was entered May 28, 1945

(R. 77–78). The petition for a writ of certiorari was filed in this Court on July 26, 1945. Certiorari was granted on October 15, 1945. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1945.

QUESTIONS PRESENTED

1. Whether, in an injunction suit brought by the Price Administrator against the Land Commissioner of the State of Washington pursuant to Section 205 (a) of the Emergency Price Control Act, to enforce compliance with the provisions of a regulation establishing maximum prices for the sale of "western timber" (including that owned by a state), the exclusive jurisdiction provisions of the Act (Section 204 (d)) preclude consideration of any question as to asserted lack of statutory authority in the Administrator to regulate the prices of state-owned timber.

2. Whether, if the question be open in this proceeding, the statutory definition of "persons" subject to the Act (Sec. 302 (h)) comprehends states and their political subdivisions when engaged in "governmental" activities.

3. Whether the Act is constitutional if so construed to include states within the definition of "persons" subject to the Act.

4. Whether this Court has exclusive and original jurisdiction of this proceeding in view of the provisions of Section 233 of the Judicial Code.

5. Whether a three-judge court should have been convoked in this proceeding under the provisions of Section 266 of the Judicial Code in view of the constitutional and statutory provisions of the State of Washington which require sales of state timber to be made at public auction to the highest bidder.

6. Whether attorneys for the Price Administrator were without authority to institute and prosecute this proceeding independently of the Department of Justice.

STATUTES AND REGULATION INVOLVED

1. The Emergency Price Control Act of 1942 (56 Stat. 23, 50 U. S. C. App., Supp. IV, Sec. 901 et seq.), as amended by the Stabilization Extension Act of 1944 (58 Stat. 640, 50 U. S. C. App., Supp. IV, Sec. 925) and by the Stabilization Extension Act of 1945 (Pub. Law No. 108, 79th Cong., 1st Sess.). Copies of the Act as amended will be handed to the Court at the argument. The pertinent provisions may be summarized as follows:

Sections 1, 2 (a), 2 (c) and 2 (g), together with the pertinent provisions of Section 302, the "Definitions" Section, pertain to the issuance of maximum price regulations. Section 2 (a) authorizes the Price Administrator by regulation or order to establish maximum prices for "a commodity or commodities" when the prices thereof "in [his] judgment * * * have risen or threaten to rise to an extent or in a manner in-

consistent with the purposes of this Act." The declaration of statutory purposes is contained in Section 1 (a). The term "commodity" is defined in Section 302 (c) as comprehensively including "articles, products, and materials" and "services," with certain named exceptions none of which are here applicable. The category of "persons" whose dealings in commodities are subject to the Act is defined in Section 302 (h) in comprehensive and non-exceptional terms, and specifically includes "the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing: *Provided,* That no punishment provided by this Act shall apply to the United States, or to any such government, political subdivision, or agency." Section 1 (c) prescribes the geographical reach of the Act as embracing "the United States, its Territories and possessions, and the District of Columbia."

Section 4 (a) makes it "unlawful * * * for any person" to violate any maximum price regulation.

Section 201 (a) authorizes attorneys appointed by the Administrator to "appear for and represent the Administrator in any case in any court."

Section 201 (d) authorizes the Administrator to issue regulations deemed necessary or proper to carry out the purposes of the Act. Regulations governing the procedures for administrative

review of maximum price regulations are based on this provision and on Section 203 (a).

Sections 203 and 204 establish the exclusive statutory procedure for administrative and judicial review of price regulations. Section 204 (d) explicitly prohibits all courts except the Emergency Court of Appeals (created by Section 204 (c)) and, on review therefrom, this Court from passing upon the validity of the regulations in any suit.

Section 205 (a), pursuant to which the Price Administrator instituted this suit, provides for institution of injunction proceedings to restrain violations of the prohibitions contained in Section 4 (a) "whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act." Section 205 (c) provides for exercise of jurisdiction by courts in enforcement suits.

Section 305 supersedes conflicting prior statutes.

2. Section 233 of the Judicial Code (28 U. S. C. 341) provides in part as follows:

> The Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a State is a party, except between a State and its citizens, or between a State and citizens of other States, or aliens, in which latter cases it shall have original, but not exclusive, jurisdiction.

* * * (R. S. Sec. 687, March 3, 1911, c. 231, sec. 233, 36 Stat. 1156.)

3. Section 266 of the Judicial Code (28 U. S. C. 380) provides, in pertinent part, as follows:

> No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his as-

sistance to hear and determine the application two other judges: * * *.

4. The pertinent provisions of the Enabling Act providing for the admission to the Union of the State of Washington (Act of Feb. 22, 1889, 25 Stat. 676), and of the State Constitution (Art. III, Sec. 1, Arts. IX, XVI; Remington's Rev. Stat. (Wash.) Vol. 1, pp. 347 et seq.) and statutes (Remington's Rev. Stat. (Wash.), Secs. 7797–46, 7797–50, 7797–53), which pertain to the disposal of state timber, are set forth in the Appendix to Petitioner's brief, at pp. 26–33.

5. Maximum Price Regulation No. 460, issued August 25, 1943, effective August 31, 1943 (8 Fed. Reg. 11850), establishes maximum prices for western timber. The pertinent provisions will be summarized.

Section 1 of the Regulation prohibits sales or purchases of western timber at prices higher than those established by the Regulation.

Section 2 describes the "products" ("western timber") covered by the Regulation, to-wit, "all timber (whether green or dead, standing or down, of all species, classes and sizes, where the timber has not been severed from the stump), west of the 100th meridian of longitude in the continental limits of the United States."[1]

[1] The words "in the continental limits of the United States", were added by Amendment 1, effective September 22, 1943 (8 Fed. Reg. 13023.)

Section 3 describes the types of "transactions" covered by the Regulation, to-wit (insofar as here pertinent), "all sales of western timber if the primary purpose of the purchase is the acquisition of timber for commercial conversion into timber products."

Section 4 declares which "persons" are subject to the Regulation, to-wit, "any person who makes the kind of sales or purchase covered by this Regulation * * *"; and, further: "The term 'person' includes: * * * the United States, any State or any government, or any of its political subdivisions; or any agency of the foregoing."

Section 5 establishes methods for computing the maximum legal prices of publicly owned timber. The computation is made by taking the "appraised value" ("based on the appraisal principles used by the public agency during 1941") plus specific dollars-and-cents additions, set forth in Section 5, for timber sold per 1000' log scale; and, for timber sold on a lineal foot basis, the computation is made by adding a flat 20 percent to the "appraised value."[2]

Section 6 provides that maximum prices for privately-owned timber shall be determined by taking the "appraisal value on the nearest comparable tract of publicly owned timber, sold by the United States Forest Service of the Department

[2] The provisions pertaining to sales on a lineal foot basis were added by Amendment 2, effective June 17, 1944 (9 Fed. Reg. 6457).

of Agriculture or by the Department of the Interior since September 1, 1942, plus the additions given in the table in the preceding section [Section 5]".[3] The maximum prices for publicly-owned timber are thus made a yardstick for all sales of western timber.[4]

STATEMENT

This case arose out of an attempted sale of state-owned timber by petitioner at prices in excess of those established by Maximum Price Regulation No. 460. The district court dismissed the Price Administrator's complaint for injunc-

[3] The words "by the United States Forestry Service of the Department of Agriculture or by the Department of Interior", were added to the Regulation by Amendment 3, issued April 7, 1945, effective April 12, 1945 (10 F. R. 3870). Previously the Regulation referred merely to "publicly-owned timber sold since September 1, 1942". As explained in the official Statement of Considerations which accompanied the issuance of Amendment 3, the change was made "for administrative reasons only." Experience under the Regulation had shown that appraisals of federal disposal agencies were more uniform and consistent than those of state and local agencies, and that copies of appraisals of timber offered for sale by the latter were not regularly furnished to the Administrator. OPA Service, Desk Book "Lumber", p. 42, 308.

[4] For privately-owned timber to which the comparability provisions of Section 6 cannot be applied, Section 7 provides special pricing methods.

Until Amendment 3 was adopted in April, 1945, as noted in the preceding footnote, state timber was one of the categories of "publicly-owned timber" whose sale prices were operative in the yardstick method thus provided. The elimination of state sales as an element in the yardstick does not affect, of course, the maximum price provisions applicable to timber sales by states under Section 5 of the Regulation.

tion to restrain the attempted sale (R. 38), and the court below reversed (R. 71–78). The facts of the case are not in dispute (R. 39, 54), and may be summarized as follows:[5]

The Administrator filed his complaint, motion for preliminary injunction and temporary restraining order, and supporting affidavit in the District Court on July 28, 1944. (R. 2–11.) The essential allegations, which were fully admitted and were also supplemented in certain details by the defendants (R. 19, 20, 21–25, 28–32), were that, on November 23, 1943, at a public auction held by defendant Jack Taylor, as State Land Commissioner, the defendant Soundview Pulp Company, one of two bidders, bid the sum of $86,336.39, for timber located on Section 36, Township 36 North, Range 5 East, W. M., Skagit County, Washington; that the above sum was paid to defendant Jack Taylor; that the maximum legal price for said timber under Maximum Price Regulation No. 460 was $77,853.25; that on or about November 26, 1943, defendant Jack Taylor notified defendant Soundview that its bid was the highest and best bid; that in De-

[5] The defendants named in the Administrator's complaint were Jack Taylor (the petitioner's predecessor in office as State Land Commissioner), and the Soundview Pulp Company, a bidder at the state timber auction (R. 2–3). Petitioner was substituted for Jack Taylor as a party in this proceeding by order of the court below entered January 23, 1945 (R. 68). The Soundview Pulp Company has not applied for review to this Court. See p. 15, fn. 10, *infra*.

cember, 1943, after the Seattle District Office of Price Administration had been informed of the foregoing facts and had advised Soundview that consummation of the sale at the bid price would constitute a violation of the Regulation and of the Act, separate actions were instituted by Soundview and by the unsuccessful bidder, Coos Bay Pulp Corporation, in the Superior Court for Thurston County, State of Washington, seeking an adjudication as to the legality of Soundview's bid and of the proposed transfer of the timber to Soundview;[6] that these suits, being consolidated for trial, resulted in a decree enjoining Jack Taylor from accepting Soundview's

[6] Three suits were filed in the Superior Court: (1) by Soundview, filed December 1, 1943, praying for an injunction to restrain Jack Taylor from confirming the sale or issuing a bill of sale until the legality of Soundview's bid could be determined, and for a declaratory judgment determining the rights, status and legal relations of the parties; (2) by Coos Bay Pulp Corporation, filed December 4, 1943, for a writ of mandate to compel Jack Taylor to confirm the sale in Coos Bay and issue to that corporation a bill of sale; (3) by Coos Bay on December 6, 1943, praying for an injunction to restrain Jack Taylor from confirming the sale or issuing a bill of sale to Soundview. Coos Bay and Soundview had made alternating competitive bids at prices over the ceiling price, but at the termination of the bidding Coos Bay had withdrawn its over-ceiling bids, and in its suit in the Superior Court it sought confirmation of the sale to it at the maximum legal prices. The Price Administrator did not become a party to these proceedings. He made an appearance as *amicus curiae*. (R. 9, 23, 29–31; *Soundview Pulp Company* v. *Taylor*, 21 Wash. 2d 261, 150 P. 2d 839 (1944).)

bid or consummating the sale to Soundview, and directing him to consummate the sale to Coos Bay at the maximum legal price;[7] that thereafter on July 22, 1944, on appeal taken by Jack Taylor to the Supreme Court of the State of Washington, the judgment of the Superior Court was reversed with directions to dismiss the actions brought by Coos Bay;[8] that instead of waiting the statutory 30-day period for the issuance of the remittitur of the State Supreme Court the defendant Jack Taylor entered into a stipulation for the immediate issuance of the remittitur; that, at the time of the filing of the Price Administrator's complaint in the District Court (July 28, 1944) the defendant Jack Taylor proposed to complete the sale to Soundview without delay; that the defendant Jack Taylor had received a number of other bids for additional parcels of state timber and was preparing to consummate these sales at prices in excess of those established by the Regulation; and that in the judgment of the Price Administrator the defendants Soundview and Jack Taylor had engaged in and were about to engage in acts and practices which constituted and would constitute a violation of Section 4 (a) of the Act and of the provisions of

[7] See *Soundview Pulp Co.* v. *Taylor*, *supra*, fn. 6.

[8] The Price Administrator did not become a party to that appeal. He made an appearance as *amicus curiae*. (R. 23–31; *Soundview Pulp Co.* v. *Taylor*, *supra*, fn. 6.

Maximum Price Regulation No. 460. (R. 3-4, 8-10, 19, 20, 21-25, 28-32.)

The complaint prayed for a preliminary and final injunction and a temporary restraining order restraining both defendants from consummating the proposed transaction or arranging any other transfer of title, for a consideration in excess of the maximum price, and from otherwise violating or attempting to perform any act in violation of Maximum Price Regulation No. 460; and for such other and further relief as might seem just and equitable.[9]

On August 8, 1944 defendant Jack Taylor filed a motion to dismiss (R. 17-19) and an answer raising issues of law as follows: (1) That the complaint fails to state a cause of action; (2) that jurisdiction over the subject matter and over the person of defendant Jack Taylor is vested exclusively in the United States Supreme Court; (3) that if jurisdiction lies in the district court it must be exercised by a three-judge court; (4) that the Price Administrator instituted this suit without obtaining the approval of the Attorney General of the United States; (5) that Maximum Price Regulation No. 460 has no application to the sale in question; (6) that the Supreme Court of the State of Washington had ruled in an ap-

[9] On July 28, 1944, the district court granted the Administrator's application for a temporary restraining order and order to show cause for preliminary injunction (R. 11-15).

peal from the consolidated actions brought by the bidders herein against defendant Jack Taylor that the Emergency Price Control Act of 1942 was not applicable to the sale in question or to any other sales of timber made by defendant Jack Taylor on behalf of the State of Washington in the performance of his governmental functions ("first affirmative defense"); (7) that the Act "does not by its terms or intendment apply to sales made by a sovereign state in the performance of its governmental functions, for the reason that said act does not purport to include such sales and that if the act so intended then the act violates the Fifth and Tenth Amendments to the Constitution of the United States" ("second affirmative defense") (R. 26); (8) that inasmuch as the Act provides "that no punishment provided by this Act shall apply to the United States, or to any such government, political subdivision, or agency" and inasmuch as the Price Administrator is seeking to enjoin Jack Taylor acting in his official capacity as Land Commissioner of the State of Washington, the Administrator "is thereby seeking a remedy against the said defendant which, by the terms of the act itself, has been denied plaintiff" ("third affirmative defense") (R. 26). In addition, defendant Jack Taylor averred in his answer that the timber in question was located upon land held in trust by the State of Washington for school purposes, and acquired by the State under Section 10 of the En-

abling Act (25 Stat. 676); that the sale in question was held in response to a directive issued on September 15, 1943 by the Western Log and Timber Administrator of the War Production Board ordering that the timber in question be immediately made available for sale; that the sale was made at public auction in accordance with Article XVI, Section 2 of the State Constitution; that in addition to the sale in question the defendant Jack Taylor had offered four other tracts of timber for sale on which he had received bids in excess of the ceiling price as computed under Maximum Price Regulation No. 460; and that none of these sales had been completed (R. 17–27).[10]

All issues of law being submitted (there being no issues of fact), full hearing of the cause on the merits was held before the district court on August 11, 1944 (R. 35–36, 38–39). The court in a series of preliminary rulings overruled defendant Taylor's jurisdictional contentions, i. e., those

[10] The defendant Soundview Pulp Co. on August 11, 1944, filed a separate answer (R. 27–33) indicating that it did not desire to engage in any dispute with the Price Administrator on any issue of law or fact, but desired merely that the matters involved be adjudicated, inasmuch as the defendant was "still in doubt as to its rights, status and legal relations with the State of Washington and the United States Government as they are affected by the constitution and statutes of the State of Washington and the statutes, orders and regulations of the United States and desire only to act in a legal manner as a court of competent jurisdiction shall declare those rights" (R. 32).

which raised issues as to the exclusive jurisdiction of the Supreme Court (28 U. S. C. 341), as to the necessity of convening a three-judge court (28 U. S. C. 380), and as to the institution of suit by the Price Administrator without the approval of the Department of Justice (R. 36, 39, 40, 54–56).

The court thereafter heard argument on the remaining issues of law (R. 36, 38–39). These turned upon the question whether, in view of the exclusive jurisdiction provisions of Section 204 (d) of the Act, the district court could pass upon defendant Taylor's contention that the Act, in its grant of authority to the Price Administrator, does not authorize the issuance of any regulation or order controlling the sale prices of school land timber owned by the State of Washington. The district court's rulings on these issues were announced in its oral decision (R. 56–64), minute entries (R. 36), and judgment (R. 38–41). The court ruled that,[11]

> (1) Maximum Price Regulation No. 460 in terms applies to the subject matter of this suit, i. e., it applies to school land

[11] In view of the fact that these rulings, in our view, display plain contradictions and inconsistencies as among each other, and inasmuch as a dispute is indicated before this Court over the question whether the district court ruled on the validity of the Regulation (Petitioner's brief, p. 42), it seems to us necessary to set forth the rulings in the present Statement in such a manner as to facilitate analysis of the district court's action.

timber of the State of Washington (R. 62).

(2) The court is without jurisdiction to pass upon the validity of Maximum Price Regulation No. 460 (R. 56–57, 62–63).

(3) The Regulation is valid (R. 36, 57).

(4) The Act is constitutional (R. 36, 57–58).

(5) The court has jurisdiction to construe the Act inasmuch as the court's injunctive authority is invoked, and it must therefore be free to interpret the statute upon which rests its authority to grant this extraordinary remedy (R. 57–63).

(6) If in exercising such an authority to construe the Act, the court adopts a construction which "affects ultimately adversely or otherwise, a regulation thereunder, that is a condition which can not be avoided * * *" (R. 57).

(7) As construed by the court, the Act (Sections 2 (a), 302 (c) and 302 (h)) does not comprehend within its grant of authority to the Price Administrator any authority to set maximum prices for sales of school land timber by the State of Washington made in its sovereign and governmental capacity (R. 36, 39, 58–61, 63).

(8) This construction of the Act rests upon the court's view that the definition of

the term "person" in section 302 (h) of the Act is the only possible basis for including state school land timber within the coverage of the Act; and that in construing this definition ("the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of the foregoing") it must be presumed that Congress could not have intended to bring the federal government into conflict with the authority of the states over public lands held in trust by them for the sovereign and governmental purpose of maintaining their public school systems (R. 58–61, 63).

The judgment of the district court dismissing the complaint was filed August 21, 1944. As heretofore stated, the court overruled defendant Taylor's jurisdictional defenses. Upon stipulation of all parties it was further adjudged and ordered that the defendants should maintain the *status quo* pending further proceedings in this cause. (R. 38–40.)

On May 28, 1945, the circuit court of appeals reversed the judgment of the district court (R. 77–78). As to the related questions of the applicability of the statute to state timber sales and the impact of the exclusive jurisdiction provisions, the decision below rested on alternative grounds: (1) that Section 204 (d) of the Act does not "normally * * * permit of questioning the validity of a regulation by the process of con-

struing the statute"; and (2) that the statutory definition of "persons" subject to the Act comprehend states and their political subdivisions. The court stated that it "hesitated" to rest decision on the first ground alone because "two state courts of last resort, in considering the problem as related to the sale of publicly-owned property, have thought otherwise", and because it was "persuaded" that "Regulation 460 has ample statutory warrant" (R. 74). The circuit court of appeals did not in terms rule on the question of the constitutionality of the Act as so construed, but its reasoning clearly indicated that no doubt was entertained on this point (R. 75–76). It approved the district court's rulings in the Administrator's favor on the defenses addressed to Sections 233 and 266 of the Judicial Code and to the question as to the Administrator's right to maintain the suit by his own attorneys (R. 76–77).

SUMMARY OF ARGUMENT

The contention that the Price Control Act does not authorize the issuance of a regulation dealing with state-owned timber amounts to an attack upon the validity of the regulation and as such is barred by the exclusive jurisdiction provisions of Section 204 (d). The Court does, however, have power to determine the constitutionality of the statute—so long as the asserted defect lies in the Act itself and not in the regulation—and to interpret the Act to the extent necessary to decid-

ing the constitutional question. For reasons set forth in the Government's brief in No. 238, we believe that the Act reaches States and that it may constitutionally do so. We do not believe there are any inconsistent State laws, but this would in any event be immaterial.

The district court had jurisdiction of the case. The case does not fall within the exclusive jurisdiction of this Court as a suit against a State because Section 205 of the Price Control Act itself supersedes Section 233 of the Judicial Code insofar as suits under the Act are concerned. See *United States* v. *California*, 297 U. S. 175. It was unnecessary to convene a three-judge district court under Section 266 of the Judicial Code because it is not claimed by the plaintiff-respondent that any State statute violates the Constitution but at most that the State laws are inconsistent with a federal statute. *Ex Parte Bransford*, 310 U. S. 354. And the language of the Act, its legislative history and the consistent interpretation by the Administrator and the Department of Justice, all demonstrate that it was proper for the Administrator to appear through his own attorneys in the lower courts.

ARGUMENT

On the merits—whether a state and its subdivisions are subject to regulation under the Emergency Price Control Act—the issue in this case is the same as in *Hulbert and Bowles* v. *Twin*

Falls County, No. 238. In that case the question arises as to the meaning of a regulation which contains the same definition of "person" as is found in the Price Control Act itself. Since the Court has jurisdiction to interpret the regulation, we have not challenged its authority to determine the point in that case. Here, however, the applicable regulation specifically includes the word "State" in its definition of "person" (see p. 4, *supra*), so that there can be no question as to the meaning of the regulation, but only as to whether it is authorized by the statute, and, if so, whether the statute is constitutional. The Court is not precluded from determining the constitutionality of the statute and, while the Act precludes the courts from determining in this type of case the validity of the regulation by way of construction of the statute, we believe, for the reasons set forth at pp. 32–34, *infra*, that the Court in this case may interpret the Act to the extent necessary to the disposition of the constitutional question. However, because the question of statutory construction is also presented on the record independently of the constitutional question, and indeed has occupied the forefront of this case from its outset, we consider it necessary to set forth the authorities which establish that the distinct questions of construction (when not related to constitutionality) are within the exclusive cognizance of the statutory review forum created by Section 204 of the Act.

The question as to whether states and their subdivisions are subject to the Act is in substance covered by our brief in No. 238, inasmuch as the argument as to the meaning of the statutory language is necessarily the same as the argument as to the meaning of the identical language of the regulation involved in that case. Accordingly, we shall not go into that question here. We wish to point out, however, that since the brief in No. 238 was prepared, the Emergency Court of Appeals has passed upon the validity of the application of a regulation issued under the Act to a political subdivision of a state, and has upheld the Administrator's position. See *City of Dallas* v. *Bowles,* decided December 20, 1945, reprinted in the Appendix, *infra,* pp. 44–53.

I

SECTION 204 (d) PRECLUDES ANY PROCESS OF DETERMINING THE VALIDITY OF A REGULATION BY CONSTRUING THE STATUTE

The Court is familiar with the procedure established by Sections 203 and 204 of the Act for exclusive review of price and rent regulations, and with the accompanying provisions of Section 204 (d) which preserve the exclusive jurisdiction of the statutory review forum against infringements by other tribunals. *Yakus* v. *United States,* 321 U. S. 414; *Bowles* v. *Willingham,* 321 U. S. 503; *Lockerty* v. *Phillips,* 319 U. S. 182.

It is contended by petitioner that these provisions do not apply where the issue is whether a

regulation is authorized under the statute—in particular, whether a regulation in terms applicable to "States" is allowable under the statutory definition of "person" as including "any other government". We think it clear that the exclusive jurisdiction provisions protect regulations from review outside the exclusive statutory forum not only where the objection to validity is of a constitutional nature but also where the objection is addressed to the statutory validity of a regulation, *i. e.,* where the question is as to the authority of the Price Administrator to issue a particular regulation under the terms of the statute. The language of Section 204 (d) refers unqualifiedly to the "validity" of regulations. Nothing in the words of the section supports any distinction as between various types of validity or invalidity. Moreover, Section 204 (b) of the Act provides that one of the matters falling within the exclusive purview of the Emergency Court of Appeals is the authority to determine whether a challenged regulation is "in accordance with law." This question, as well as the question whether a regulation is "arbitrary or capricious", is reserved for decision exclusively by that court.

If any confirmation were needed to support the plain reading of the statute it may be found in the legislative history, which conclusively establishes that the exclusive purview of the statutory forum comprises contentions as to the statutory invalidity of a regulation. In favorably report-

ing to the Congress the provision of Section 204 (b), just noted, which establishes the scope of review and standards of decision in the Emergency Court of Appeals, the Senate Committee on Banking and Currency stated (77th Cong., 2d Sess., Sen. Rep. No. 931, pp. 7–8, 24):

> The Emergency Court * * * may examine the entire record before the Administrator to determine *whether he has acted in accordance with the statute*, whether the procedure that he has followed is in accordance with accepted standards of due process of law, and whether he has exercised a reasonable judgment on questions committed to his discretion. (pp. 7–8, italics added.)
>
> By applying these standards the [Emergency] Court [of Appeals] has ample power to keep the Administrator within the bounds prescribed by the bill. (p. 24.)

Similarly, in favorably reporting Section 204 (d), the exclusive jurisdiction section, the Senate Committee stated (p. 24):

> Section 204 (d) further provides *expressly* that no court, other than the Emergency Court and the Supreme Court, shall have jurisdiction or power to consider the validity, constitutional *or otherwise*, of any regulation or order issued under Section 2. (p. 24, italics added.)

The decided cases under the Price Control Act have consistently effectuated the intent of Con-

gress that Section 204 (d) should stand as a bar against contentions of statutory invalidity in enforcement suits under this statute. Thus in *Yakus* v. *United States*, 321 U. S. 414, and *Bowles* v. *Willingham*, 321 U. S. 503, the exclusive jurisdiction provisions were applied as against a variety of objections addressed to the validity of the regulations involved, including a number of objections of statutory invalidity. *E. g.*, see the *Yakus* decision at 321 U. S. 419, where it is stated that one of the objections involved was "that the Regulation did not conform to the standards prescribed by the Act". To the same effect see *Bowles* v. *Seminole Rock and Sand Co.*, 325 U. S. 410, 418–419; *United States* v. *Pepper Bros.*, 142 F. 2d 340 (C. C. A. 3); *Rosensweig* v. *United States*, 144 F. 2d 30 (C. C. A. 9), certiorari denied, 323 U. S. 764; *Shrier* v. *United States*, 149 F. 2d 606 (C. C. A. 6), certiorari denied October 8, 1945; *Bowles* v. *American Brewery Co.*, 146 F. 2d 842, 845 (C. C. A. 4).[12]

[12] Other decisions giving effect to Section 204 (d) against contentions of statutory invalidity are: *Brown* v. *Cummins Distilleries Corp.*, 53 F. Supp. 659 (W. D. Ky. 1944) (alleged failure to obtain approval of Secretary of Agriculture in accordance with Section 3); *United States* v. *Central Packing Corp.*, 51 F. Supp. 813 (E. D. N. Y. 1943) (alleged failure to allow a fair margin to processors of agricultural commodities in accordance with Section 3 of the Stabilization Act of 1942, 50 U. S. C. App. 963, 56 Stat. 765); *United States* v. *Gregory*, 1 OPA Op. and Dec. 974 (W. D. Ky. 1943) (same); *Brown* v. *W. T. Grant Co.*, 53 F. Supp. 182 (S. D. N. Y. 1943) (alleged failure to consult with industry members in accordance with Section 2 (a)); and *Brown* v. *Lee*, 51 F. Supp. 85 (S. D. Cal.

In the instant case petitioner is attacking the statutory validity of the regulation on the ground that it attempts to reach a subject matter or a "person" not contemplated within the statutory grant of authority to the Price Admnistrator. No good reason exists for distinguishing between this type of attack on statutory validity and any other type. Where the question was raised whether the Act was intended to apply to a Chap. X bankruptcy trustee, the Circuit Court of Appeals for the Second Circuit declared:

> To import a classification which would remove questions of the validity of regulations from the control of the Emergency Court of Appeals because they are not within the purview of the statute would be bound to lead to endless casuistry and destroy the uniformity of administration which the Emergency Price Control Act was designed to secure. (*Cullen* v. *Bowles*, 148 F. 2d 621, 624 (C. C. A. 2).)

Similarly, in a case involving sales at public auction of liquors which Texas had acquired by forfeiture from offenders against its laws, the Circuit Court of Appeals for the Fifth Circuit observed:

> The further contention is made that Texas is not bound to yield to the regula-

1943) (alleged contravention of the provision of the Act (Section 4 (d)) protecting persons against compulsion to sell or rent). The expressions on the point collected in petitioner's brief (pp. 42–43) are against the weight of authority and are plainly incorrect.

> tion *because the underlying act of Congress does not apply to it.* This seems to be the equivalent of saying that the *regulation is invalid* because it is not in harmony with and does not tend to effectuate the cardinal purposes of the law. Since exclusive jurisdiction to determine the legality of price regulations promulgated under the Emergency Price Control Act is vested in the Emergency Court of Appeals, the invalidity of the regulation may not be urged as a defense to this action. [Italics added, *Bowles* v. *Texas Liquor Control Board,* 148 F. 2d 265, 266 (C. C. A. 5).]

So too with the question of whether the exemption in the Act for common carriers applies to companies owning taxicabs who make rental charges therefor to operators of the cabs (*Reeves* v. *Bowles,* 151 F. 2d 16 (App. D. C.), certiorari denied January 2, 1946), or whether the Act applies to exporters (*Brown* v. *Liniavski,* 53 F. Supp. 513 (S. D. N. Y.).

It would defeat the purpose of the exclusive jurisdiction provisions if objections such as those here involved, or other objections addressed to the statutory validity of the regulations, were to be excepted from the scope of the statutory restriction. As is fully brought out by this Court in the *Yakus* case, *supra,* the purposes of the exclusive jurisdiction provisions are the prevention of premature disruptions of price control during the war emergency and the preservation of nation-

wide uniformity in the operation of these controls. Continuity and uniformity of control would be just as surely threatened by decisions in the regularly established courts holding regulations invalid on statutory grounds as by decisions holding them invalid on constitutional grounds. It is particularly important from the point of view of insuring uniformity in the interpretation of the various provisions of the Price Control Act that objections addressed to the statutory validity of regulations, i. e., objections calling for construction of the statute, be confined to a single specialized judicial forum which possesses the essential expertise for the determination of these questions, many of which present complex issues that can only be determined upon a full consideration of the Congressional plan and purposes viewed comprehensively from the standpoint of over-all emergency price control.

It is to be observed, further, that when issues of this type are presented to the Emergency Court of Appeals there is available an underlying factual record containing full data on all pertinent matters. No such factual record was available to the district court, and that court could not direct the parties to assemble such a record without displaying most plainly that it was prepared to act in a matter exclusively reserved to the Emergency Court of Appeals. Such a record in this case might show not only that States were persons within the meaning of the Act but that,

apart from the definition of "person", the products sold by States were "commodities" which Congress intended to be covered.[13]

The State of Washington, in common with any other party subject to an OPA regulation, has full rights under the Price Control Act to challenge the regulations in the statutory review forum. It is noteworthy that the State of New Mexico and the City of Dallas, Texas, have availed themselves of the statutory review procedure in cases involving the precise questions presented here. On October 23, 1942, the State of New Mexico filed a protest with the Price Administrator against Maximum Price Regulation No. 460 contending that the Regulation was invalid on two grounds: (1) that standing timber is not a "commodity" within the meaning of the statute; and (2) that the State is not a "person" within the meaning of the statute. The protest was denied on February 24, 1944. The State of New Mexico has not carried the matter further. (In the matter of State of New Mexico, protest, OPA docket No. 1460–1–P.) The City of Dallas carried its case, involving municipally owned housing, to the Emergency Court of Appeals, which upheld the Administrator's ruling. *City of Dallas* v. *Bowles*, decided December 20, 1945, *infra*, pp. 44–53.

[13] Cf. the statutes quoted in the Government's brief in No. 238, pp. 10–11, which were held applicable to states in the absence of any explicit definition.

Petitioner contends that the jurisdictional ban established by Section 204 (d) against consideration of the statutory validity of regulations is inapplicable in equity cases because of the inherent discretionary powers of an equity court. The district court in this case was impressed by this contention (R. 57). We submit, however, that to open up issues as to the validity of regulations in suits for enforcement by injunction would to a large extent defeat the purposes of Section 204 (d). The suggestion is wholly inconsistent with this Court's ruling in *Bowles* v. *Willingham*, 321 U. S. 503, which was an equity case. See also *Bowles* v. *Meyers*, 149 F. 2d 440 (C. C. A. 4); *Bowles* v. *Carothers*, (C. C. A. 5, decided December, 1945). Section 204 (d) has, of course, been applied without qualification in numerous other equity cases. E. g., *Reeves* v. *Bowles*, 151 F. 2d 16 (D. C. App.), certiorari denied January 2, 1946; *Bowles* v. *Lake Lucerne Plaza, Inc.*, 148 F. 2d 967 (C. C. A. 5), certiorari denied May 17, 1945; *Bowles* v. *Texas Liquor Control Board*, 148 F. 2d 265 (C. C. A. 5); *Henderson* v. *Burd*, 133 F. 2d 515 (C. C. A. 2); *Bowles* v. *Cullen*, 148 F. 2d 621 (C. C. A. 2).

Finally, petitioner contends that it is necessary to consider whether the state is subject to the Act for the purpose of determining whether the district court as distinct from the Supreme Court (see Point III; p. 36, *infra*), had jurisdiction of the Administrator's suit. Such an inquiry is fore-

closed by Section 204 (d). Section 205 (c) of the Act confers upon the district courts jurisdiction of all enforcement proceedings brought under Section 205 without qualification as to the character or status of the parties to the proceedings. Section 205 (a), under which this proceeding was brought, provides (by reference to Section 4) for the enforcement by injunction of regulations issued under Section 2, and Section 204 (d) denies jurisdiction in such actions to consider the validity of a regulation issued under Section 2. As shown heretofore Section 204 (d) bars all attacks upon the validity of a regulation, including attacks based on a contention that the regulation is not authorized by the Act. The regulation, in other words, must be accepted in all courts, other than the Emergency Court of Appeals (and this Court upon review of the judgments of that court), as being authorized by the Act and valid in all other respects. Therefore, if a party is subject to the regulation he is presumed as a matter of law to be subject to the Act in all proceedings brought under Section 205. This presumption cannot be rebutted except in the statutory review proceedings provided for by Sections 203 and 204 of this Act. It follows, therefore, that the question whether the State is subject to the Act is one that cannot be inquired into for any purpose in this proceeding (except in relation to the constitutional inquiry, see pp. 32–34 *infra*). The State is subject to the regulation—this petitioner does not deny—

and consequently for all the purposes of this case, it must be treated as subject to the Act. Petitioner's suggestion that there is authority here to reach this question by inquiring into the question of jurisdiction is an attempt to lead the Court on a false scent. Certainly this Court, and the courts below, have authority to determine their jurisdiction, but the necessary inquiry here leads to the provisions of Section 205 (a) and 205 (c). And as we have seen, Section 205 (a) is explicitly interlocked with Section 4, which is in turn interlocked with regulations issued under Section 2, which are in turn protected from scrutiny in this proceeding by virtue of Section 204 (d). What petitioner asks this Court to do would just as surely defeat the congressional policy underlying Section 204 (d) as would a direct assault upon the regulation itself.

II

THE ACT IS NOT UNCONSTITUTIONAL IN SO FAR AS IT AUTHORIZES THE REGULATION OF SALES PRICES OF TIMBER ON STATE-OWNED SCHOOL LANDS

As this Court recognized in the *Yakus* case, *supra*, Section 204 (d) does not deny to defendants in enforcement actions under the Act the right to challenge the constitutionality of the basic statute as distinct from the regulation. Persons should not be permitted, of course, to utilize this right as a means of indirectly attacking the regulations themselves instead of the statute. The constitutional objection must actually be aimed at an asserted defect residing within the basic Act

itself and must not be merely couched as an attack on the statute while actually aimed at the particular regulation.

It is usually not difficult to determine whether an objection phrased in constitutional terms reaches the Act or merely veils an attack on the regulation. Issues such as those decided by this Court in the *Yakus* case, *supra*,—i. e., delegation of power, the authority of Congress to regulate prices in wartime—clearly involved the constitutionality of the Act itself. If the Act were unconstitutional on these grounds no valid regulation free from such defects could be framed. Petitioner's objection here that Congress lacks authority to regulate the prices of state school land timber extends beyond any implementing regulation and strikes at the Act itself. If the Act were bad for this reason the Price Administrator could take no valid action whatever in connection with this subject matter.[14]

[14] On the other hand, various issues of substantive and procedural due process and issues as to allegedly unconstitutional "takings" may not be passed upon outside the exclusive statutory review forum, because here the seat of the asserted defect would be the regulation itself; regulations free from such asserted confiscatory or procedural defects can be issued within the existing statutory framework. Hence, an objection of this type, even though it be phrased in the form of an attack upon the statute, would actually be addressed to the particular offending regulation. For example, an objection that the statutory standard "generally fair and equitable" (Section 2 (a)) is unconstitutional as authorizing the imposition of unconstitutional property loss could not be decided without first determining whether the particular implementing regulation impinged on the party in such a way as to raise

In disposing of petitioner's constitutional objection the Court is free to construe the statute to the extent necessary to reach the constitutional issue. As shown in Point I, *supra*, a court is not free to interpret the statute in order to determine whether a particular regulation is authorized under the law. Here, however, Section 204 (d) must be read as permitting the Court to construe the Act in order that the Court's power to decide constitutional questions not merely be one to pass upon questions *in vacuo*. Congress was careful to preserve the right of constitutional defense in these cases and its declared policy in this regard should be given effect. The principle should be limited, however, to cases involving the types of constitutional defenses previously mentioned, i. e., those where the asserted constitutional defect resides in the Act itself.

The question as to whether the Act reaches States is covered in the Government's brief in No. 238. The constitutional question is briefly, although we believe adequately, discussed at pages 15–16 of the Government's brief in No. 238, and it is necessary to add but little here.

It will scarcely be denied that the controls over public timber sales established by the Act and

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the question sought to be reached, but if this were determined the seat of the constitutional defect would thereby have been found to be the regulation itself. On the other hand, where the question, as here, is one of constitutional authority or coverage *vel non*, the regulation could not be saved by modifying its meaning or application.

the Regulation are within the war powers of Congress. Sales of public timber, as the Statement of Considerations accompanying Maximum Price Regulation No. 460 explains (OPA Service, p. 39: 2415), constitute a significant proportion of Western timber sales; as is there shown, timber prices generally "are strongly influenced by public sale prices", and the regulation is built around the latter prices "as a yardstick".[15] Were state sales beyond the reach of Congress, purchasers would flock to state auctions, bidding sky-high prices for this extremely scarce commodity; and the consequences of this price disruption would be felt in all timber, lumber, and lumber products markets. It is well-known that every inflationary incident produces further inflationary consequences. The liveliness of the competitive bidding between the two lumber companies represented at the auction which led to this suit illustrates what would happen if these state sales were exempted from price control.

Petitioner argues (Br. pp. 59–67) that the Price Control Act, if construed as applicable to states, is inconsistent with federal and state statutes granting to the State of Washington sections of land for school purposes and providing that they shall be sold at public sale. Even if there were an inconsistency, the subsequent federal statute would supersede the earlier enact-

[15] Until April 12, 1943, state sales were included in computing the yardstick formula. (See p. 9, fn. 4, *supra*.)

ments (as Section 305 of the Price Control Act expressly declares), and the Supremacy Clause of the Constitution would make the federal act controlling as against any State laws or constitutional provisions relating to the disposal of school land timber. But in any event, there is no inconsistency. The Price Control Act does not forbid public sales to the highest bidder, but only the acceptance of bids above ceiling prices. The State laws do not require bids to be made at unlawful prices, or, for that matter, at any particular prices. Although the federal Government has similar requirements for public sale to the highest bidder, it has had no difficulty in having such sales made within the ceiling prices.

III

THE CASE DOES NOT FALL WITHIN THE EXCLUSIVE JURISDICTION OF THE SUPREME COURT

Petitioner contends that the district court lacked jurisdiction because the suit is one against a State and within the exclusive jurisdiction of this Court. If we assume that the suit is against the State rather than against a State official acting in his individual capacity (cf. *Mine Safety Appliances Co.* v. *Forrestal*, decided December 10, 1945), it still does not follow that the district court lacked jurisdiction.

It is well settled that Article III of the Constitution does not of itself grant this Court *exclusive* jurisdiction over cases to which states are

parties. *Ames* v. *Kansas*, 111 U. S. 449; *United States* v. *Louisiana*, 123 U. S. 32; *United States* v. *California*, 297 U. S. 175. This Court's exclusive jurisdiction is derived from the Act of 1789 now incorporated in Section 233 of the Judicial Code, quoted *supra*, pp. 5–6. But it is well established that subsequent statutes have limited this exclusive grant of authority by implication, so that in many cases the district courts now have jurisdiction over suits to which states are parties. *North Dakota* v. *Chicago and N. W. Ry. Co.*, 257 U. S. 485; *Texas* v. *Interstate Commerce Commission*, 258 U. S. 158; *State of Minnesota* v. *United States*, 125 F. 2d 636 (C. C. A. 8); *United States* v. *Montana*, 134 F. 2d 194 (C. C. A. 9).

Section 205 (c) of the Price Control Act expressly provides that the district courts shall have jurisdiction over all proceedings under Section 205 of the Act. That such a provision has the effect of superseding Section 233 of the Judicial Code, *pro tanto*, is established by *United States* v. *California*, 297 U. S. 175, which is directly in point. In that case, suit was instituted by the United States against the State of California to recover penalties for violations of the federal Safety Appliance Act, the State having committed such violations in the course of its operation of a state-owned railroad. This Court held that the suit was properly filed in the district court, and was not governed by the provisions of Section 233 of the Judicial Code, because that statute had

been superseded by Section 6 of the Safety Appliance Act, which provided (as does Section 205 of the Price Control Act) in general terms for enforcement of the Act and for jurisdiction over such enforcement proceedings in the federal district courts. Neither the substantive provisions of the Safety Appliance Act nor the enforcement and jurisdictional provisions made any specific mention of states or state officers. Nevertheless, this Court held that the jurisdictional provisions applied to the States equally with other railroad carriers.

IV

THE CASE DOES NOT FALL WITHIN THE JURISDICTION OF A THREE-JUDGE DISTRICT COURT UNDER SECTION 266 OF THE JUDICIAL CODE

The three-judge court statute (Sec. 266, Judicial Code; 28 U. S. C. 380), is not applicable in the present case, since no attack is made against a state statute "upon the ground of the unconstitutionality of such statute". The settled meaning of this language is that the state statute (or implementing administrative action) assailed must be in conflict with some provision of the federal Constitution itself, and not merely with a federal statute or regulation. That is, the asserted unconstitutionality of the state statute may not be indirectly derived merely from the Supremacy Clause of Article VI of the Constitution, which makes federal statutes supreme over state statutes, but must be traceable directly to an asserted

inconsistency between the state statute and the federal Constitution itself. In *Ex parte Bransford,* 310 U. S. 354, 358–359, this Court declared:

> The declaration of the supremacy clause gives superiority to valid federal acts over conflicting state statutes but this superiority for present purposes involves merely the construction of an act of Congress, not the constitutionality of the state enactment. This was decided as to § 266 in *Ex parte Buder,* and before that a similar result had been reached in *Lemke* v. *Farmers Grain Company* in regard to a provision of the Judicial Code granting direct appeal to this Court in cases where the sole issue was the unconstitutionality of a state statute.

In the instant case there is no contention by the Administrator addressed to any conflict between the statutes or constitution of the State of Washington and any provision of the federal Constitution. Instead the Administrator contends that the action proposed to be taken by the State Land Commissioner is in violation of the Price Control Act. The case is thus within the principle of *Ex parte Bransford, supra,* where the issue was as to the validity of an order of a state tax agency without any allegation as to the unconstitutionality of the underlying state statute. Compare *In re Buder,* 271 U. S. 461; *Hobbs* v. *Pollack,* 280 U. S. 168. A similar question arising under the present Act was fully considered and decided by a three-judge court in *Farmer's Gin*

Co. v. *Hayes*, 54 F. Supp. 43 (W. D. Okla.), which held that it lacked jurisdiction.

Query v. *United States*, 316 U. S. 486, cited by petitioner, did not involve a situation comparable to the present one. In that case a three-judge court was held appropriate because the claim of tax immunity there asserted by officials of an Army Post Exchange rested in part on the federal Constitution itself; the state tax order involved was accordingly viewed as having been subjected to an allegation of direct conflict with the federal Constitution, and not merely with a federal statute.

V.

ATTORNEYS APPOINTED BY THE PRICE ADMINISTRATOR ARE AUTHORIZED TO INSTITUTE AND PROSECUTE CIVIL ACTIONS ON BEHALF OF THE ADMINISTRATOR INDEPENDENTLY OF THE DEPARTMENT OF JUSTICE

Petitioner's contention that attorneys for the Administrator were not authorized to institute and prosecute the present action except with the approval and under the supervision of the Attorney General or the Department of Justice is groundless. Section 201 (a) of the Emergency Price Control Act provides in part that "Attorneys appointed under this section may appear for and represent the Administrator in any case in any court". Although Section 205 (b) of the Act provides that as to criminal cases the Administrator shall "certify the facts to the Attorney General, who may, in his discretion,

cause appropriate proceedings to be brought", Section 205 (a) provides that "whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, *he* may make application to the appropriate court for an order enjoining such acts or practices." The contrasting provision thus made by Congress for the handling of criminal and civil litigation is substantially the same as in the Securities Act, which was held by the Circuit Court of Appeals for the Second Circuit "to allow the Commission complete autonomy in civil prosecutions." *Securities and Exchange Commission* v. *Robert Collier & Co.*, 76 F. 2d 939 (C. C. A. 2).[16]

The history of the Price Control Act shows that Congress intended to allow the Office of Price Administration a like autonomy in its civil enforcement litigation. On November 22, 1941, while the bill, which upon enactment became the Emergency Price Control Act, was pending before the Committee on Banking and Currency of the House of Representatives the Attorney General wrote to the Chairman of the Committee calling attention to the provision of Section 201

[16] The opinion in the *Collier* case was written by Judge Learned Hand, who had previously written the opinion in *Sutherland* v. *International Insurance Co.*, 43 F. 2d 969 (C. C. A. 2) upon which the petitioner relies. Judge Hand found no difficulty in distinguishing his prior decision on the basis of clear differences in the statutory language.

reading "Attorneys appointed under this section may appear for and represent the Administrator in any case in any court," and recommending that the bill be amended by striking the provision from the bill. The Administrator of the Office of Price Administration (which was operating under Executive Order at that period) opposed the change.[17] As a result, the provision to which the Attorney General objected was retained.

Explaining the bill, the Senate Committee on Currency and Banking in its report to the Senate (Sen. Rep: 931, 77th Cong., 2d Sess.), said:

> The bill also authorizes the Administrator to seek a court injunction against violations of the Act, and provides for the punishment of the most flagrant cases by criminal prosecutions subject to the supervision and control of the Department of Justice (p. 8).
>
> * * * * *
>
> Express authority is granted to attorneys employed by the Administrator to represent him in any case in any court. By virtue of the express provisions of Section 205 (b) criminal proceedings are under the supervision and control of the Attorney General (p. 20).

Both the Office of Price Administration and the Department of Justice have understood since the passage of the statute that the Administrator

[17] The pertinent documents are not published but are contained in the files of the Office of Price Administration.

was entitled to representation through his own attorneys in handling civil litigation in the lower courts. This has been the consistent practice in the handling of cases since 1942. Numerous civil suits have been brought by the Administrator through his own attorneys without objection by the Attorney General or the Department, and the Solicitor General has represented the Administrator in this Court in a number of such cases.

CONCLUSION

For the above reasons, the judgment below should be affirmed.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.

ROBERT L. STERN,
Special Assistant to the Attorney General.

GEORGE MONCHARSH,
Deputy Administrator for Enforcement,

MILTON KLEIN,
Director, Litigation Division,

ABRAHAM GLASSER,
Solicitor, Litigation Division,
Office of Price Administration.

JANUARY 1946.

APPENDIX

United States Emergency Court of Appeals

No. 259

CITY OF DALLAS

v.

CHESTER BOWLES, PRICE ADMINISTRATOR

Heard at Dallas, Texas, November 28, 1945

Before MARIS, *Chief Judge*, and MAGRUDER and MCALLISTER, *Judges*.

Mr. A. J. Thuss, Jr., Acting City Attorney, for complainant.

Mr. Ardine A. White, Regional Enforcement Executive, with whom *Messrs. Richard H. Field*, General Counsel, *Jacob D. Hyman*, Associate General Counsel, *Warren L. Sharfman*, Chief, Court Review Rent Branch, and *Harry H. Schneider* and *Eli A. Glasser*, Attorneys, all of the Office of Price Administration, were on the brief, for respondent.

OPINION OF THE COURT

(Filed December 20, 1945)

By MAGRUDER, *Judge*:

We have to decide here whether housing accommodations owned by a municipal corporation

are subject to rent control under the Emergency Price Control Act.

The Price Administrator imposed rent control in the Dallas Defense-Rental Area by regulation effective November 1, 1942. 8 F. R. 7322, 7333. Early in 1943, the City of Dallas and the State of Texas entered into an agreement for the joint construction of an arterial highway through the city, under which agreement the city undertook to acquire an unobstructed right of way of suitable width through a residential section. Pursuant thereto, the city purchased a number of parcels of real estate with dwelling houses thereon. The construction project was held in abeyance due to war-time conditions. Meanwhile, and as a temporary expedient, the city rented to tenants some 116 dwelling houses so acquired.

One of the houses purchased by the city had been owned and occupied by V. P. Phillips and wife. By deed executed January 27, 1945, they sold this property to the city for $5400. Contemporaneously, the city contracted to rent the property back to Mr. and Mrs. Phillips on a month-to-month tenancy at $54 per month. The freeze date in the regulation as applied to this rental area was March 1, 1942. Since on that date, and continuously up to the date of purchase by the city, the house was owner-occupied, the first rent charged by the city under its rental agreement with Mr. and Mrs. Phillips—namely, $54—became the maximum rent pursuant to § 4 (e) of the regulation, subject, however, to the authority of the Area Rent Director at any time, on his own initiative or on application by the tenant, to order a decrease of the maximum rent

under § 5 (c) (1) on the ground that the "first rent" was higher than the rent generally prevailing in the area for comparable accommodations on the freeze date.

Acting pursuant to § 5 (c) (1), the Rent Director on April 21, 1945, after due notice to the City of Dallas as landlord, entered an order decreasing the maximum rent of the dwelling rented to Mr. and Mrs. Phillips from $54 to $35 per month. It is not disputed that $35 was the rent generally prevailing for comparable accommodations on the freeze date, and that the order of the Director was therefore appropriate, apart from complainant's contention as a matter of law that municipally-owned dwelling houses are not subject to rent control.

On May 14, 1945, the City of Dallas filed with the Administrator a protest directed against the Rent Director's order of April 21, 1945, and also against those provisions of the rent regulation under which the Rent Director acted, in so far as they applied to municipally-owned housing. The Administrator denied the protest by order issued August 9, 1945, and the City of Dallas thereupon filed its complaint in this court.

The case is presented to us on the broad basis of two contentions by complainant: (1) that the Act, properly construed, does not authorize the Administrator to subject to rent control housing accommodations owned and operated by a state or political subdivision thereof, and (2) that if the Act is construed otherwise, it must be held to be unconstitutional.

On the point of statutory construction, we think complainant's argument is plainly untenable. In

this connection we follow the holding in *Bowles* v. *Case*, 149 F. (2d) 777 (C. C. A. 9th, 1945), and reject that in *Twin Falls County* v. *Hulbert*, — *Ida.* —, 156 Pac. (2d) 319 (1945), cert. granted October 22, 1945.

In defining the commodities to be subject to price control, § 302 (c) of the Act makes certain specific exemptions. Section 302 (f) broadly defines the term "housing accommodations" as meaning "any building * * * rented or offered for rent for living or dwelling purposes * * *", without any exception relating to ownership. Section 4 (a) provides that, "It shall be unlawful * * * for any person to sell or deliver any commodity * * * or to demand or receive any rent for any defense-area housing accommodations * * * in violation of any regulation or order under section 2 * * *." The term "person" is defined in language that hardly could be more inclusive. Section 302 (h) provides:

> The term "person" includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of any of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing: *Provided*, That no punishment provided by this Act shall apply to the United States, or to any such government, political subdivision, or agency.

There is nothing in the legislative history, nor is there anything in the broad declaration of policy in § 1 (a), to suggest that states or political

subdivisions thereof were intended to be exempted from price or rent regulations when engaged in selling commodities otherwise subject to regulation or in renting "housing accommodations" as defined in the Act. Certainly, the adverse effect on the economy of inflationary, unregulated prices or rents might be just as serious, whether the seller or landlord be a state or municipal corporation or a private person. See *Bowles* v. *Case*, *supra*. Furthermore, the City of Dallas would have no standing to file a protest with the Administrator under § 203 (a) of the Act, and no standing to file a complaint in this court under § 204 (a) upon denial of such protest, if it were not a "person" within the meaning of the Act.

Complainant insists that there is a "time-honored" and inflexible canon of statutory construction to the effect that states and political subdivisions thereof are deemed not to be included within the scope of federal legislation unless specifically referred to. It is not enough, says complainant, that the Act, after including the United States or any agency thereof by specific reference, goes on to include "any other government, or any of its political subdivisions"; the reference would have to be to "state" governments. No such rigid canon of construction is recognized in the cases. Indeed, it has many times been rejected. *Ohio* v. *Helvering*, 292 U. S. 360, 370 (1934); *United States* v. *California*, 297 U. S. 175, 186 (1936); *California* v. *United States*, 320 U. S. 577, 585 (1944).

In *United States* v. *California*, *supra*, the obligations imposed by the Federal Safety Appliance Act upon "any common carrier engaged

in interstate commerce" were held applicable to a state-owned and operated terminal railroad running along the San Francisco waterfront and engaged in interstate commerce. The court said (297 U. S. at 186):

> Respondent invokes the canon of construction that a sovereign is presumptively not intended to be bound by its own statute unless named in it. * * * This rule had its historical basis in the English doctrine that the Crown is unaffected by acts of Parliament not specifically directed against it. * * *. The presumption is an aid to consistent construction of statutes of the enacting sovereign when their purpose is in doubt, but it does not require that the aim of a statute fairly to be inferred be disregarded because not explicitly stated. * * *. We can perceive no reason for extending it so as to exempt a business carried on by a state from the otherwise applicable provisions of an act of Congress, all-embracing in scope and national in its purpose, which is as capable of being obstructed by state as by individual action. Language and objectives so plain are not to be thwarted by resort to a rule of construction whose purpose is but to resolve doubts, and whose application in the circumstances would be highly artificial.

We do not perceive the relevance of *Davies Warehouse Co.* v. *Bowles*, 321 U. S. 144 (1944), upon which complainant lays much stress in its argument on the point of statutory construction. That case involved a specific exemption in the Act relating to "rates charged by any common carrier or other public utility"; and the court decided that the term "public utility"—undefined

in the Act—applied to a public warehouse in California, the business of which is declared by the state constitution to be that of a public utility and which is subject to rate regulation under the Public Utilities Act of the state. This interpretation was adopted despite the fact that warehousing is not a business generally and traditionally regarded as a public utility and subjected to rate regulation by state regulatory bodies. The Supreme Court referred to legislative history as indicating that Congress deemed the danger of inflation to exist "only in a minor degree, if at all, from public utilities already under state price control". In the absence of clearer expression by Congress, the court thought that Congress did not intend to supersede the power of the California regulatory commission exercising control over warehouse rates; nor did it think that considerations of nation-wide uniformity in the application of the Emergency Price Control Act to warehousing charges were so compelling as to indicate a contrary conclusion. It is one thing to rely upon state regulatory bodies to resist inflation of public utility rates. It is quite another thing to rely upon the *self-restraint* of states or municipalities when, in a time of wartime scarcities, they are engaged in the business of selling commodities or renting housing accommodations. As we have already seen, the Act expressly confers upon the Price Administrator power to regulate prices or rents charged by the United States or any of its agencies. It is fanciful to suppose that, when § 302 (h) goes on to include "any other government, or any of its political subdivisions", Con-

gress was referring only to foreign governments, and not to state governments also.

Coming then to the constitutional point, we must reject complainant's proposition that Congress is without power to subject state- or municipally-owned and operated housing to rent control. *Bowles* v. *Case, supra.* In support of this argument, complainant refers to the Tenth Amendment, which provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Citation of the Tenth Amendment does not advance the argument much. "The amendment states but a truism that all is retained which has not been surrendered." *United States* v. *Darby,* 312 U. S. 100, 124 (1941). "The Tenth Amendment does not operate as a limitation upon the powers, express or implied, delegated to the national government." *Fernandez* v. *Wiener,* — U. S. —, decided December 10, 1945. See also *United States* v. *Appalachian Electric Power Co.,* 311 U. S. 377, 428 (1940).

It is settled that, under its plenary war powers, Congress may constitutionally protect the national economy from disastrous inflation by imposing price and rent controls. *Yakus* v. *United States,* 321 U. S. 414 (1944); *Bowles* v. *Willingham,* 321 U. S. 503 (1944). Such controls are, or may reasonably be deemed by Congress to be, a vital necessity without regard to the identity of the sellers or landlords. If a state or municipality chooses to engage in selling commodities or renting dwelling houses, it must do so in subordina-

tion to the war power of Congress to control prices and rents just as the State of California, in *United States* v. *California,* 297 U. S. 175 (1936), by engaging in interstate commerce by rail, subjected itself to the plenary power of Congress over interstate commerce. See also *California* v. *United States,* 320 U. S. 577 (1944).

Complainant invokes the analogy of the implied constitutional immunity of state instrumentalities from the federal taxing power. In this case we do not have to go so far as to hold that the war powers of Congress are subject to no analogous implied qualifications in favor of the states. *Cf. United States* v. *California, supra,* 297 U. S. at 184–5. It is enough to say that, if any such state immunities are to be implied, they could not in reason be more extensive than the recognized state immunity from federal taxation. Such tax immunity has been implied from the nature of our federated constitutional system, in order to assure to the states the full exercise of their essential governmental functions in their appropriate sphere. However, when a state engages in the sale of commodities, it is subject to federal excise taxes. *Ohio* v. *Helvering,* 292 U. S. 360 (1934). In the case at bar, the City of Dallas acquired the dwelling houses in question in the exercise of its governmental function of constructing highways. But it is obvious that the federal government is not in any substantial way interfering with the city's discharge of that governmental function, when it subjects the city-owned dwellings to a generally applicable rent regula-

tion during such time as the city chooses to put the dwellings on the rental market. It is immaterial that the renting was in a sense incidental to the performance of an orthodox "governmental" activity. *Bowles* v. *Texas Liquor Control Board,* 148 F. (2d) 265 (C. C. A. 5th, 1945).

A judgment will be entered dismissing the complaint.

U. S. GOVERNMENT PRINTING OFFICE: 1946

SUPREME COURT OF THE UNITED STATES.

No. 261.—October Term, 1945.

Otto A. Case, as Commissioner of Public Lands of the State of Washington, Petitioner,
vs.
Chester Bowles, Administrator, Office of Price Administration, and Soundview Pulp Company.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[February 4, 1946.]

Mr. Justice Black delivered the opinion of the Court.

The Congressional Enabling Act providing for the State of Washington's admission to the Union granted certain lands to that State "for the support of common schools". 25 Stat. 676, 679. Section 11 of the Enabling Act provided that these lands should "be disposed of only at public sale, and at a price not less than ten dollars per acre . . . ." The State Constitution provides that these lands shall not be sold except "at public auction to the highest bidder" at a price which may not be below both the full market value found after appraisal, and "the price prescribed in the grant" of these lands. In 1943 the State Commissioner of Public Lands held a public auction for the sale of timber on school lands. At that auction the Soundview Pulp Company, one of the respondents, bid $86,335.39 for some of the timber. This amount exceeded by approximately $9,000.00 the ceiling price fixed by Maximum Price Regulation No. 460.[1] The Price Administrator advised Soundview that consummation of the sale at the bid price would constitute a violation of the Regulation and of the Emergency Price Control Act.[2] Thereafter Soundview and the unsuccessful bidder, Coos Bay Pulp Corporation, commenced actions in the State Courts, seeking an adjudication as to the legality of Soundview's bid and of the proposed transfer of timber to Soundview. This resulted in a holding by the State Supreme Court that the Emergency Price

[1] 8 Fed. Reg. 11850, as amended.
[2] 56 Stat. 23, 58 Stat. 640; Public Law No. 108, 79th Cong., 1st Sess.

Control Act did not bar the sale of school-land timber at prices above the ceiling. *Soundview Pulp Co.* v. *Taylor*, 21 Wash. (2d) 261. When, after this judgment was rendered, the parties were about to complete the sale, the Price Administrator commenced this action in the federal District Court to enjoin the State Commissioner of Public Lands and Soundview from completing the timber transaction at a price above the ceiling fixed by the Regulation. The District Court held that the Emergency Price Control Act did not grant the Price Administrator authority to set maximum prices for school-land timber sold by the State. The Circuit Court of Appeals reversed. 149 F. 2d 777. Because the Circuit Court's decision conflicted with that of the Supreme Court of Idaho in *Twin Falls County* v. *Hulbert*, 156 Pac. (2d) 319, we granted certiorari in both cases.

Before considering the principal questions raised by the State we shall at the outset briefly dispose of certain procedural contentions. The State urges that the complaint should have been dismissed because it was signed by attorneys employed by the Price Administrator and not by the District Attorney or members of the Department of Justice. True, 28 U. S. C. 485 makes it the duty of every district attorney to prosecute most civil actions to which the United States is a party. But this section does not prescribe the procedure under the Emergency Price Control Act for that Act specifically empowers the Administrator to commence actions such as this one and authorizes attorneys employed by him to represent him in such actions. (§ 201 (a)). The State contends further that this case should have been tried by a district court composed of three judges because Section 266 of the Judicial Code requires such a proceeding whenever enforcement of a state statute is sought to be enjoined on the ground that the statute is unconstitutional. But here the complaint did not challenge the constitutionality of the State statute but alleged merely that its enforcement would violate the Emergency Price Control Act. Consequently a three-judge court is not required. *Ex parte Bransford*, 310 U. S. 354, 358-359; *Query* v. *United States*, 316 U. S. 486, 488-489. Another procedural point urged by the State is that since this is in effect a controversy between the United States and the State of Washington, the United States Supreme Court has exclusive jurisdiction under Article 3, Section 2, Clause 2, of the United States Constitution and the District Court lacked power to try the case. But it is well settled that despite Article

3, Congress can give the district courts jurisdiction to try controversies between a state and the United States.[3] Congress has given the district court power to try cases such as this one. While Section 233 of the Judicial Code does give this Court exclusive jurisdiction to try cases between a state and the United States, section 205(c) of the Emergency Price Control Act specifically provides that the District Court shall have jurisdiction over all enforcement suits. To that extent section 205(c) of the Price Control Act supersedes section 233 of the Judicial Code. *United States* v. *California*, 297 U. S. 175, 186.

The State's principal contention is that sales by a state, such as the one here involved, are not and cannot be made subject to price control. Maximum Price Regulation No. 469 which the State's sale of timber allegedly violated specifically provides that it is applicable to sales by states. The State makes the following contentions: (1) Insofar as the Regulation applies to state sales it is unauthorized by the Emergency Price Control Act, since Congress did not intend that Act to apply to states. (2) Even if the Act was intended to apply to state sales, the Act should not be construed as authorizing the Price Administrator to fix a minimum price at which timber on school land grants can be sold by states. (3) If the Act is so construed, it violates the Fifth and Tenth Amendments to the Constitution.

We ordinarily would not pass on the statutory authority of the Administrator to promulgate the Regulation in a proceeding such as this one. For Congress has granted exclusive initial jurisdiction to determine this question to the Emergency Court of Appeals. *Lockerty* v. *Phillips*, 319 U. S. 182. But while the Act thus denies a defendant in an enforcement proceeding the right to challenge the validity of the Regulation, it does not deny him the right to attack the Emergency Price Control Act itself on Constitutional grounds. *Yakus* v. *United States*, 321 U. S. 414, 430. Of course, this right may not be utilized as a means of indirectly attacking the regulations themselves instead of the statute. But here petitioner's third contention, that Congress lacks authority to regulate the prices of state school-land timber extends beyond the implementing regulation and strikes at the Act itself. In order to reach this Constitutional question, we first have to decide whether the Act properly interpreted, is ap-

[3] Ames v. Kansas, 111 U. S. 449; United States v. Louisiana, 123 U. S. 32; United States v. California, 297 U. S. 175.

plicable to sales by states, including sales of timber on school grant lands.

The Emergency Price Control Act grants to the Price Administrator broad powers to set maximum prices for commodities and rents and makes it unlawful for "any person" to violate these maximum price regulations. Section 302(h) defines a "person" as including "an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of any of the foregoing, and includes the United States or any agency thereof, or any other government or any of its political subdivisions, or any agency of any of the foregoing." This language on its face, and given its ordinary meaning, would appear to be broad enough to include any person, natural or artificial, or any group or agency, public or private, which sells commodities[4] or charges rents. The argument that the Act should not be construed so as to include a state within the enumerated list made subject to price regulation, rests largely on the premise that Congress does not ordinarily attempt to regulate state activities and that we should not infer such an intention in the absence of plain and unequivocal language. Petitioner presses this contention so far as to urge us to accept as a general principle that unless Congress actually uses the word "state", courts should not construe regulatory enactments as applicable to the states. This Court has previously rejected similar arguments,[5] and we cannot accept such an argument now.

We think it too plain to call for extended discussion that Congress meant to include states and their political subdivisions when it expressly made the Act applicable to the United States "or any other government, or any of its political subdivisions, or any agency of any of the foregoing . . . ." Congress clearly intended to control all commodity prices and all rents with certain specific exceptions which it declared. It would frustrate this purpose for courts to read exemptions into the Act which Congress did not see fit to put in the language. Excessive prices

[4] Section 302 of the Act defines "commodity" as including "services rendered otherwise than as an employee in connection with the processing, distribution, storage, installation, repair, or negotiation of purchases or sales of a commodity, or in connection with the operation of any service establishment for the servicing of a commodity."

[5] Ohio v. Helvering, 292 U. S. 360, 370; United States v. California, 297 U. S. 175, 186; California v. United States, 320 U. S. 577, 585.

for rents or commodities charged by a state or its agencies would produce exactly the same conditions as would be produced were these prices charged by other persons. We, therefore, have no doubt that Congress intended the Act to apply generally to sales of commodities by states.[6]

Nor can we accept the contention that a special exemption could be read into the Act in order to permit states holding land granted for school purposes to charge more than the ceiling price set for timber. In reaching this conclusion we are not unaware of the difficulties which confronted the Commissioner of Public lands of the State of Washington, nor of the importance of protecting the public interest in these school lands. Both the Act of Congress, which granted the land to Washington, and the Constitution of the State, had provided for safeguards in connection with the disposition of school lands. We do not question the wisdom of these precautions. We are mindful also of the fact that this Court has declared that grants of land to the state, like those here involved, transferred exclusive ownership and control over those lands to the state. *Cooper* v. *Roberts*, 59 U. S. 173. No part of all the history concerning these grants, however, indicates a purpose on the part of Congress to enter into a permanent agreement with the states under which states would be free to use the lands in a manner which would conflict with valid legislation enacted by Congress in the national interest. Here again, the sale of school-land timber at above-ceiling prices could be just as disturbing to the national inflation-control program as the charging of excess prices for timber harvested on any other lands.

We now turn to petitioner's Constitutional contention. Though as we have pointed out petitioners have alleged that the Act applied to setting a maximum price for school-land timber violates the Fifth and Tenth Amendments, the argument here seems to spring from implications of the Tenth Amendment only. The contention rests on the premise that there is a "doctrine implicit in the Federal Constitution that the two governments, national and state, are each to exercise its powers so as not to interfere with the free and full exercise of the powers of the other". It is not contended, and could not be under our prior decisions, that the ceiling price fixed by the Administrator is Constitution-

[6] The Emergency Court of Appeals recently considered the same question and reached the same conclusion. City of Dallas v. Bowles, — Fed. 2d —.

ally invalid as applied to privately owned timber. Yakus v. *United States*, 321 U. S. 414; *Bowles* v. *Willingham*, 321 U. S. 503. Nor is it denied that the Administrator could have fixed ceiling prices if the state had engaged in a sales business "having the incidents of similar enterprise usually prosecuted for private gain". *Allen* v. *Regents of University System*, 304 U. S. 439, 452. But it is argued that the Act cannot be applied to this sale because it was "for the purpose of gaining revenue to carry out an essential governmental function—the education of its citizens." Since the Emergency Price Control Act has been sustained as a Congressional exercise of the war power, the petitioners' argument is that the extent of that power as applied to state functions depends on whether these are "essential" to the state government. The use of the same criterion in measuring the Constitutional power of Congress to tax has proved to be unworkable,[7] and we reject it as a guide in the field here involved. Cf. *United States* v. *California*, *supra*, 297 U. S. at 183-185.

The State of Washington does have power to own and control the school-lands here involved and to sell the lands or the timber growing on them, subject to the limitations set out in the Enabling Act. And our only question is whether the state's power to make the sales must be in subordination to the power of Congress to fix maximum prices in order to carry on war. For reasons to which we have already adverted, an absence of federal power to fix maximum prices for state sales or to control rents charged by a state might result in depriving Congress of ability effectively to prevent the evil of inflation at which the Act was aimed. The result would be that the Constitutional grant of the power to make war would be inadequate to accomplish its full purpose. And this result would impair a prime purpose of the federal government's establishment.

To construe the Constitution as preventing this would be to read it as a self-defeating charter. It has never been so interpreted. Since the decision in *McCulloch* v. *Maryland*, 4 Wheat. 316, 420, it has seldom if ever been doubted that Congress has power in order to attain a legitimate end—that is, to accomplish the full purpose of a granted authority—to use all appropriate means plainly adapted to that end, unless inconsistent with other parts

[7] See the several opinions in Saratoga Springs Co. v. United States, No. 5, decided January 14, 1946.

of the Constitution. And we have said, that the Tenth Amendment "does not operate as a limitation upon the powers, express or implied, delegated to the National Government".[8]

Where as here, Congress has enacted legislation authorized by its granted powers, and where at the same time, a state has a conflicting law which but for the Congressional Act would be valid, the Constitution marks the course for courts to follow. Article VI provides that "The Constitution and the Laws of the United States . . . made in Pursuance thereof . . . shall be the supreme Law of the Lands; . . ."[9]

Affirmed.

Mr. Justice DOUGLAS would reverse the judgment for the reasons set forth in his dissenting opinion in *Hulbert* v. *Twin Falls County*, No. 238, decided this day.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

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[8] Fernandez *v.* Wiener, — U. S. —; decided December 10, 1945. United States *v.* Darby, 312 U. S. 100, 124; California *v.* United States, *supra*; United States *v.* California, *supra*; Oklahoma *v.* Atkinson Co., 313 U. S. 508, 534-535.

[9] For application of this principle see Hines *v.* Davidovitz, 312 U. S. 52, 68; Stewart & Co. *v.* Sadrakula, 309 U. S. 94, 104.